

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS



For 25 years, America's
Partner For Equal Justice

COMMENTS ON THE OFFICE OF INSPECTOR GENERAL'S SEMIANNUAL REPORT TO THE CONGRESS

FOR THE PERIOD

October 1, 1999 – March 31, 2000

May 2000

FOREWORD

I am pleased to transmit the comments of the Legal Services Corporation ("LSC") Board of Directors ("Board") regarding the Semiannual Report of LSC's Office of Inspector General ("OIG") for the six-month period of October 1, 1999 through March 31, 2000.

LSC's Board of Directors recognizes the value of the Inspector General function and remains committed to working with the Inspector General to achieve our goal of providing high quality legal assistance to the poor of our nation.

Douglas S. Eakeley, Chairman
Legal Services Corporation
May 31, 2000

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MESSAGE OF THE BOARD OF DIRECTORS

During this reporting period, the Legal Services Corporation (“LSC”), a widely recognized model of public-private partnership, concluded its 25th year of helping to provide legal services to those who could not otherwise afford them and is proudly carrying this mandate into the new century. LSC achieved significant progress during this reporting period on a number of Management Initiatives.

LSC also continued to devote substantial time, effort, and attention to improving the accuracy of the Case Service Reporting (“CSR”) system through which recipients of its funding report to LSC on the number and type of cases for which legal assistance was provided during the year. LSC has worked diligently with its grantees to improve their CSR data. This Board recognizes that LSC must improve its data collection system and the accuracy of its reports to Congress, and we are committed to doing so.

During this reporting period, among LSC’s other principal priorities were the maintenance of an effective competitive grant-making system, implementation of Congressional mandates and ensuring grantee compliance therewith, promoting and facilitating grantees’ use of relevant technological advancements, development of a new strategic plan, and the development of new performance measures.

BACKGROUND

The Legal Services Corporation

LSC is a private, non-profit corporation established in the District of Columbia by the Legal Services Corporation Act of 1974, as amended ("the LSC Act"),¹ to provide financial support for legal assistance in civil proceedings to persons unable to afford legal services. LSC is governed by an eleven-member bi-partisan Board of Directors who are appointed by the President of the United States with the advice and consent of the Senate. The Board appoints LSC's President, who serves as the Corporation's chief executive officer, subject to general policies established by the Board.

The 1988 Amendments to the Inspector General Act of 1978 ("1978 Act") required LSC to establish an Office of Inspector General ("OIG") and extended specific provisions of the 1978 Act to LSC. Accordingly, such an office was established by and for LSC. The Inspector General is appointed by, reports to and serves under the general supervision of LSC's Board of Directors.

Funding and Grant-Making Activities

To carry out the purposes of the Act, Congress appropriated to LSC \$305 million for fiscal year 2000 (Pub. L. 106-113), but that amount was reduced by a .38% rescission to \$303.841 million. For 2000, LSC is using approximately \$289 million (the same as last year) to fund 237 legal services programs to provide legal assistance to indigent persons throughout the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and Micronesia. The balance of the appropriated amount is allocated as follows: \$8.9 million for Management and Administration, \$2.1 million for the OIG, and \$4.25 million for information technology grants to LSC grantees.

MANAGEMENT INITIATIVES

¹ 42 U.S.C. §§ 2996-2996l.

During the reporting period, LSC furthered its efforts to improve the efficiency of its competitive grant award system and the effectiveness of the delivery of legal assistance through statewide planning initiatives for coordination of legal services. LSC continued to demonstrate its ability to ensure compliance with program rules and regulations, while maintaining high quality legal assistance to eligible clients.

Competition and State Planning

The grant award process for the year 2001 grants begins with the publication of the Request for Proposals (“RFP”) in April 2000. The Corporation is soliciting grant proposals for 138 service areas and will receive grant renewal applications for 148 service areas. States with service areas up for competition fall into two categories according to state planning concerns. Applicants in the ten states, in which state planning requires the most significant service area reconfiguration, receive additional time to submit their notices of intent to compete and their grant proposals.

LSC received and processed 185 applications in response to its FY 2000 RFP. Despite staggered scheduling that resulted from state planning decisions, all grant proposals were thoroughly assessed and grant decisions for FY 2000 funding were made on schedule during November 1999. Five service areas attracted multiple applications for FY 2000 grants. Current LSC grantees were awarded the grants for each of those service areas.

During this reporting period, LSC continued to work as an active partner with state planning groups as part of its ongoing state planning initiative. State planning initiatives seek to expand access to legal services for low-income people, through the development of comprehensive, integrated delivery systems in each state. In furtherance of this objective, LSC staff and consultants conducted evaluative visits in several states, attended meetings of regional and national legal services organizations, and provided written and oral guidance to states about their plans to increase access.

At the suggestion of the state planning staff, LSC’s President approved consolidation of service areas in eight states in order to provide more effective structures in those states for delivery of services to eligible clients. These changes generally followed the recommendations of state-based planning groups. Staff also monitored expenditure of the \$375,000 provided for state planning technical assistance grants and contracts awarded during the prior reporting period. These grants and contracts are designed to accomplish several goals: improve intake systems; develop integrated technology systems; explore consolidations; and encourage coordinated state planning

efforts. LSC is encouraged by advances in the states, and by the broad participation and effort being put into the process by grantees, bar associations, courts, state funders, and other stakeholders in the civil justice system.

LSC continues working directly with applicants and recipients to improve delivery systems by setting high quality standards, identifying areas for improvement within programs, providing technical assistance, and making the decision not to fund those applicants that fail to demonstrate the capacity to provide quality legal services to eligible clients.

For year 2000 grants, all information submitted by applicants in the grant application and renewal processes was done electronically, with the exception of certain supplementary documentation, which exists only in hard copy. For the first time, LSC evaluated grant applications and renewals through an automated process, which retains essential applicant information, so as to permit sophisticated analysis of attributes of successful LSC grant recipients. We will continue to pursue advantages of technology in the grant competition process and other LSC initiatives.

Technology Initiative Grants

This year, for the first time, LSC received an appropriation of \$4.25 million to make technology grants to our programs. It is LSC's goal that 100% of our targeted client community have access to legal assistance. To accomplish this objective, LSC is making grants to existing grantees for the purpose of promoting full access and high-quality legal representation through the use of technology.

In March of this year LSC launched the program and the early round of competition is completed. LSC awarded grants totaling \$382,770 to four legal services programs in Ohio, California, West Virginia, and Pennsylvania. Although LSC is not requiring matching funds for these grants, we encourage applicants to partner with others to increase the impact of these grants. In this early round, the LSC funding for these initiatives is only a third of the total amount to be spent on these projects, which comes to over one million dollars. The applicants formed economic partnerships with bar associations, courts, bar foundations, and other organizations to make these efforts possible.

Competition, in the final round, is under way with applications from 37 states. Awards for this round are expected to be announced in July.

Case Service Reporting

LSC has continued to devote substantial time, effort, and attention to improving the accuracy of the Case Service Reporting (“CSR”) system through which recipients of LSC funding report to LSC on the number and type of cases for which legal assistance was provided during the year. On April 30, 2000, LSC released a “Special Report to Congress” outlining its 1999 case statistics.²

For 1999, LSC grantees reported closing 1,038,662 civil legal cases relating to issues such as domestic violence, child custody and visitation rights, evictions, access to health care, bankruptcy, unemployment and disability claims, and many other issues faced by millions of low-income Americans.

To fulfill its pledge to Congress and to the general public to provide the most accurate and reliable data, LSC adjusted the number of cases reported by its grantees (1,038,662) by the average estimated error rate (11%) ascertained through a vigorous Self-Inspection process, and reported a total of 924,000 as closed by grantees in 1999. This figure represents only a portion of the work conducted by LSC grantees; nonetheless, it represents the most reliable, albeit conservative, estimate of cases closed in 1999 by LSC grantees.

Recognizing that legitimate concerns have been raised regarding the accuracy and validity of CSR data that LSC’s grantees annually submit, LSC has committed itself to ensuring that reliable data is provided. The decrease in the number of closed cases for 1999 is, in large measure, the result of LSC’s new and more stringent reporting guidelines. For example, it has been clarified that if a case file fails to contain any required documentation (financial eligibility, citizenship/eligible alien status, within program priorities, etc.) it may not be reported to LSC as a case. As a result, numerous cases have been excluded from reporting because the case lacked the required documentation, even though the client received legal service.

In addition to providing Congress and the public more reliable and accurate statistics on closed cases, LSC is committed to developing and to implementing by January 1, 2001, a new reporting system to document and assess the work of LSC grantees. LSC has contracted with an independent research firm to develop and implement a pilot project at six LSC grantees that will gather the necessary information needed to create a reporting system that captures all the work of LSC grantees, not simply the traditional “closed cases.” This reporting system will detail and describe, in addition to “actual cases,” the delivery of services such as community education, information through Internet websites, self-help forms and kiosks.

LSC is also committed to using economic analysis and performance measures to evaluate the impact of federal funding and individual grantee performance. By 2001, LSC will require grantees to provide information that allows LSC to comparatively analyze the cost per case among similarly situated programs and similar types of services, i.e., brief advice and referral. LSC statistics for Calendar Year 2002 will reflect the input of all these performance measures.

² The report can be viewed on the LSC website at <http://www.lsc.gov>.

LSC remains committed to continuing to improve the accuracy of its case statistics, vigorously enforcing the Congressional restrictions enacted in 1996, and creating new and more meaningful ways to evaluate the work of legal services programs receiving federal funds.

Development of New Performance Measures

LSC started planning for development of a new performance measurement tool to replace the existing CSR system. The objective is to develop a new system for measuring outputs (matters as opposed to only cases) and outcome measurements that would, among other things, measure impact beyond the individual case and other hard-to-measure aspects of the work funded by LSC.

Migrant Conference

In March 2000 LSC held a successful two and one-half day Migrant Delivery conference. The purposes of the conference were: (1) to provide an opportunity for LSC to hear from migrant projects about their concerns and ideas for service delivery to eligible migrants; (2) to offer a forum for the exchange of ideas and the sharing of delivery challenges and successes with each other and with LSC; and (3) to assist LSC in developing new funding policies regarding the delivery of migrant legal services. Executive Directors and migrant project staff from 40 of the 50 funded migrant projects were invited to attend the conference. The states not represented were those with very small migrant grants.

Conference discussion topics included: the need for specialized migrant projects; the changes in the farm labor workforce and how this impacts on delivery; definition of migrant farm-worker; the gaps in delivery; the indicators of excellence in migrant programs; and delivery models. LSC is following up with migrant programs to encourage continuing coordination in addressing migrant delivery.

Rulemaking Activities

During this reporting period, LSC continued to work on proposed revisions to its rules on "timekeeping" and "recipient fund balances." LSC is currently in the process of preparing the *Federal Register* notice for the revised timekeeping final rule, 45 CFR Part 1635. The final rule will require part-time attorneys and paralegals at LSC-funded programs, who also work for an organization that engages in restricted activities, to certify that they did not engage in any restricted activities during the time for which they were compensated by the LSC-funded program. The revisions to the timekeeping rule are intended to ensure that part-time employees do not engage in restricted activities during

any time for which they are being compensated by the LSC-funded program.

LSC is also in the process of preparing the *Federal Register* notice for the revised final rule for recipient fund balance, 44 CFR Part 1628. Under the final rule, recipients will be permitted to carry-over fund balances of 10% or less; will be able to seek LSC approval for carry-over balances of between 10% and 25%; and will be generally prohibited from retaining fund balances of over 25%, except in three very limited circumstances. The exceptions would be where the fund balance overage results from the receipt of insurance proceeds; real estate sale proceeds; or proceeds received as a result of a lawsuit in which the recipient was a party.

Finally, LSC is preparing to publish for comment a formal notice setting forth the text of a proposed *Property Acquisition and Management Manual* which, when adopted, will provide LSC grantees with a single complete and consolidated set of policies and procedures related to property acquisition, use and disposal and would supersede guidance currently contained in several separate LSC documents.

Strategic Planning

At our annual meeting, on January 29, 2000, the Board approved a final set of strategic directions that form the basis for the continued development of a comprehensive strategic plan for LSC for the next five years.

Technology

Also during this period, LSC revised its Internet website so as to assure that its message is delivered in a clear and consistent manner. Through enhanced technology, the new website supports LSC efforts to provide immediate and accurate information to Congress and the public about the valuable work done by LSC and its grant recipients.

LSC continues its commitment to technology as an important tool both internally (by enhancing efficiency) and externally (by exploring the unbounded potential of technology to further the delivery of client services).

FOIA Electronic Reading Room

LSC ushered in the year 2000 by launching its new electronic Freedom of Information Act (“FOIA”) reading room on the world wide web. In 1996 Congress amended the FOIA, which was made generally applicable to LSC by the LSC Act at 42 U.S.C. §2996d(g). The Electronic Freedom of Information Act (“EFOIA”) amendments require LSC to

post electronically and index reading room documents created after November 1, 1997.³ One can access FOIA information from the new LSC website, which features a FOIA link from the homepage or directly at <http://www.lsc.gov/foia.htm>. Among other things, the electronic reading room includes external decisions, policy statements and frequently asked questions. In addition to the electronic reading room, the LSC FOIA link contains post-1997 annual FOIA reports, LSC statutes and *Federal Register* notices.

³ See 5 U.S.C. § 552(a)(2), as amended by Pub. Law No. 104-231, 110 Stat. 3048.

COMPLIANCE MONITORING AND ENFORCEMENT

In the summer of 1999, LSC instituted a Self-Inspection process for all its grantees' 1998 CSRs. This process required each grantee to review a sample of cases to determine whether its CSRs were at least 95% accurate. Those that met this standard certified that their CSR data as substantially accurate and those that did not submitted an explanation of the errors, along with a statement of the actions that had been taken or were being taken to correct the problem in the future. For 1999 CSRs, LSC developed a more detailed and demanding uniform set of Self-Inspection procedures and required that the actual results of the sample be submitted to LSC. Instead of certifying to substantial accuracy, grantees were required to certify that the process had been completed according to the instructions and the summary of sample results reported to LSC was accurate.

For 1999, using the more demanding set of criteria, LSC set the cutoff point for further review at a 10% error rate. Accordingly, during this reporting period, LSC's Office of Compliance & Enforcement ("OCE") continued its work with those programs that were unable to report that their CSR error rate was under 5% for 1998, or under 10% for 1999.

During this reporting period, OCE continued its work with those programs that were unable to report that their CSR error rate was under 5% for 1998, or under 10% for 1999. This follow-up entailed various efforts ranging from letters and telephone contacts to corrective action and, where warranted, additional steps have been taken. Further action has included on-site compliance trips for a sample of these programs to ensure success of the program's corrective plan. As resources allow, LSC will visit those programs identified as having significant or systemic problems.

In the past six months, OCE's mission to ensure accurate case management and reporting led the department to conduct four on-site reviews, which focused on CSR issues. Among the inspected programs were two large state-wide programs and other significant LSC recipients. The programs visited were: Kansas Legal Services, Rhode Island Legal Services, Westchester-Putnam Legal Services, and Legal Aid of Central Texas. LSC implemented Corrective Action Plans in the instances in which programs need to affect specific improvements; OCE staff conduct follow-up assessments to monitor the progress and success of such plans.

By Program Letter 2000-1, issued January 14, 2000, LSC directed all its grantees to conduct a detailed self-inspection of their 1999 CSR data and to certify to LSC concurrently with the March 1, 2000 CSR submission date that:

- 1) they had taken a representative sample of [x number of] cases out of the total number of 1999 CSR cases being reported to LSC according to the instructions contained in Program Letter 2000-1;
- 2) that exceptions were noted in [y number of] cases out of that sample; and
- 3) the required Self-Inspection Summary Form accurately reported, by category, the actual number of exceptions noted during the Self-Inspection. All currently funded LSC grantees have responded and this process produced an estimated error rate for each grantee, based on standardized questions. The average error rate nationally was 11%.

With regard to the one audit report in which the recipient, the Legal Aid Bureau ("LAB") of Maryland, asserted attorney-client privilege to deny the OIG auditors access to certain materials, OCE went on site and tested procedures proposed by LAB to provide access to materials necessary to a review of CSR compliance without implicating privileged materials. An on-site visit to LAB will be scheduled to assess CSR compliance, using the tested procedure.

Actions on IPA Annual Audits of Grantees

During the review period, the OIG referred 10 findings from the annual audits performed by the independent public accountants hired by the grantees to LSC management for follow-up assessment through the A-50 process. Nine of the findings have been resolved and closed by LSC management. OIG has concurred with all closed findings. In addition, the OCE audited 145 financial statements, which resulted in 18 letters of corrective action. All noted findings have been resolved.

Complaints

OCE received 38 complaints and closed 37 during the reporting period.

PROGRAM INTEGRITY

Corporation's Annual Financial Statement Audit

An independent public accounting firm selected by the OIG performed the FY1999 audit of LSC financial statements. The firm issued an unqualified opinion on LSC's statement of financial position as of September 30, 1999, the end of LSC's fiscal year, and on the related statements of operations and cash flows for the fiscal year.

The OIG confirmed that the accounting firm performed the audit in accordance with *Government Auditing Standards* and that the audit work provided a reliable basis for the firm's opinion on LSC's FY '99 financial statements.

Investigations

Investigations in this period revealed three *potentially* problematic cases. While the OIG made no finding of violation, these matters were referred to management for further study and are still under review by management.

Statutory Recommendation

The *Legislative and Regulatory Review* section of the OIG Semiannual Report notes that, during this reporting period, one grantee denied its Independent Public Accountant ("IPA") unrestricted access to its records during the course of its audit by the IPA.

Although outside of this reporting period, it is worth noting that, on May 2, 2000, the OIG formally recommended to LSC's management the suspension of LSC funding to the grantee at issue based on the grantee's failure to have an acceptable audit due to their refusal to allow their independent auditor access to client case files. Then, on May 17, 2000, LSC initiated suspension proceedings by formally advising the grantee of LSC's proposed determination to suspend all LSC funding to it commencing July 1, 2000." The matter is now running its regulatorily-prescribed course and will be reported on in our next Semiannual Report.

As for the specific proposal submitted by the IG, while the Board is committed to providing assurance of compliance with Congressional directives, it is not clear that legislation is needed or would be appropriate to enable IPAs to carry out their

responsibilities.

TABLE 1
Management Report on
Office of Inspector General Audits of Grantees
Issued With Questioned Costs
For the Six Month Period Ending March 31, 2000

	Number of Reports	Disallowed Costs
A. Audit Reports for which final action had not been taken by the commencement of the reporting period.	0	\$0
B. Audit Reports on which management decisions were made during the reporting period.	0	\$0
Subtotals (A + B)	0	\$0
MINUS:		
C. Audit Reports for which final action was taken during the reporting period:	0	\$0
(i) Dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise.	0	\$0
(ii) Dollar value of disallowed costs that were written by management.	0	\$0
D. Audit Reports for which no final action has been taken by the end of the reporting period.	0	\$0
Audit Reports for which no final action had been taken within six months of issuance.	0	\$0

TABLE 2

Management Report on Audit Reports Issued During The Six Month Period Ending March 31, 2000, With Recommendations That Funds Be Put to Better Use By Management Agreed to in a Management Decision

	Number of Reports	Dollar Value
A. Audit Reports for which final action had not been taken by the commencement of the reporting period.	0	\$0
B. Audit Reports on which management decisions were made during the reporting period.	0	\$0
Subtotals (A + B)	0	\$0
MINUS:		
C. Audit Reports for which final action was taken during the reporting period:	0	\$0
(i) Dollar value of recommendations that were actually completed.	0	\$0
(ii) Dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed.	0	\$0
(iii)		
D. Audit Reports for which no final action has been taken by the end of the reporting period.	0	\$0
Audit Reports for which no final action had been taken within six months of issuance.	0	\$0

